

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

PIPER LEARNING, INC.,

Plaintiff,

v.

MY CREATIVITY BOX, INC.,

Defendant.

Case No. [21-cv-07067-YGR](#) (AGT)

**ORDER REQUESTING  
SUPPLEMENTAL BRIEFING ON  
PLAINTIFF'S MOTION FOR  
DEFAULT JUDGMENT**

Re: Dkt. No. 28

Piper Learning, Inc., alleges that after it severed ties with its co-founder and former CEO, Mark Pavlyukovskyy, Pavlyukovskyy founded a new company, My Creativity Box, Inc., at which he continued to use Piper's trademarks and trade secrets, and through which he interfered with Piper's efforts to raise additional venture capital. *See* Dkt. 24, FAC ¶¶ 9–25.

My Creativity Box, not Pavlyukovskyy, is the defendant in this case. But in 2020, Piper brought substantially similar claims to those raised here (i.e., trademark infringement, trade secret misappropriation, conversion, interference with economic advantage) against Pavlyukovskyy, and Piper settled with Pavlyukovskyy in 2021. *See Piper, Inc. v. Pavlyukovskyy*, No. 20-cv-03663-WHO, Dkt. 64-2. Given that prior case, plus the preliminary findings below, the Court directs Piper to explain why this case isn't barred under the doctrine of claim preclusion.

1. This case and *Pavlyukovskyy* concern claims that “arise out of the same transactional nucleus of facts,” involve “infringement of the same right[s],” and involve “substantially the same evidence.” *Headwaters Inc. v. U.S. Forest Serv.*, 399 F.3d 1047, 1052 (9th Cir. 2005) (simplified).

2. *Pavlyukovskyy* ended in a settlement in which the parties agreed to file a stipulation of dismissal with prejudice. *See* 20-cv-03663, Dkt. 64-2 ¶ 5.1. “[A] stipulated dismissal of an action with prejudice in a federal district court generally constitutes a final judgment on the merits and precludes a party from reasserting the same claims in a subsequent action in the same

court.” *Id.*<sup>1</sup>

3. Privity, for purposes of claim preclusion, arises between “corporations and their officers or shareholders.” *Id.* at 1053.

Piper must submit a supplemental brief in response to this order by March 24, 2023.

**IT IS SO ORDERED.**

Dated: March 13, 2023

A handwritten signature in black ink, appearing to read 'Alex G. Tse', is written over a horizontal line.

Alex G. Tse  
United States Magistrate Judge

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<sup>1</sup> The parties in *Pavlyukovskyy* haven’t filed a stipulation of dismissal, but that may be due to a clerical error. There has been no activity in *Pavlyukovskyy* since July 27, 2021.